

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2003 JUN 10 AM 11:52
CLEVELAND, OHIO

IN RE: SULZER HIP PROSTHESIS) Civil Action No.: 01-CV-9000
AND KNEE PROSTHESIS PRODUCT)
LIABILITY LITIGATION) ALL CASES
)
This document relates to:) (MDL No. 1401)
Verna Kress)
) Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Verna Kress, by and through her attorney Chafica A. Singha, Esq. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated March 3, 2003 on Appellant's claim for benefits from the Sulzer Settlement Trust.

Appellant timely appealed the decision of the Appellee, and contends that Appellee erred in its decision to award a net benefit amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted an untimely Blue Form seeking Unrevised APR benefits on September 25, 2002.
2. In support of her claim, Appellant submitted with her claim form an affidavit of Attorney Chafica A. Singha describing the efforts she made to obtain the medical records required to render Appellant's claim form complete.
3. The Affidavit of Chafica A. Singha indicates that Appellant knew she was an Affected Product Recipient and had decided to pursue a claim for benefits from the Sulzer Settlement Trust before the September 5, 002 deadline for submitting a claim for Unrevised APR benefits.
4. On November 4, 2002 Appellee did issue a Preliminary Determination that Appellant was not eligible for Unrevised APR benefits because the claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
5. On December 11, 2002 Appellant submitted a letter contesting the Preliminary Determination and attached to that letter was a copy of the Affidavit of Chafica A. Singha that had been included with the original submission.
6. On March 3, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because she did not file her claim before the deadline.
7. Appellant has not submitted any evidence that demonstrates that her failure to submit a timely claim form was caused by circumstances giving rise to a permissible extension of time under CAP 29.

**IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Verna Kress

Page 2 of 2

After a thorough review of the appeal submitted by the Appellant and the response submitted by the Appellee, the Special Master finds as follows:

There is no evidence of an abuse of discretion by the Appellee in determining that the claim was not filed timely. Appellant's untimely submission of the Blue Form is barred by the plain language of the Settlement Agreement, and Appellant has not submitted any evidence that demonstrates excusable neglect.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to submit to the Court a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by June 25, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

June 10, 2003

Date



Leo M. Spellacy, Sr., Esq.
Special Master